

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Cortese Landfill Site
Tusten, NY

CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.,

EVONIK DEGUSSA CORPORATION as
successor to HULS AMERICA INC.,
successor to KAY FRIES CHEMICALS,
INC.,

UNITED TECHNOLOGIES CORPORATION
on behalf of BASF CORPORATION, as
successor to INMONT CORPORATION,

HENKEL CORPORATION, successor by
merger to INDOPCO, INC. d/b/a
NATIONAL STARCH & CHEMICAL
COMPANY

SCA SERVICES, INC.

U.S. EPA Region 2
CERCLA-02-2011-2007
Proceeding under Sections 106
and 122 of the Comprehensive
Environmental Response,
Compensation, and Liability Act of
1980, as amended, 42 U.S.C. §§
9606 and 9622

Respondents,

ADMINISTRATIVE ORDER ON CONSENT FOR REMEDIAL DESIGN

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I. JURISDICTION AND GENERAL PROVISIONS

1. The Administrative Order on Consent ("Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Consolidated Edison Company of New York, Inc., Evonik Degussa Corporation as successor to Huls America Inc., successor to Kay Fries Chemicals, Inc., United Technologies Corporation on behalf of BASF Corporation, as successor to Inmont Corporation, Henkel Corporation, successor by merger to Indopco, Inc. d/b/a National Starch & Chemical Company, and SCA Services, Inc. (collectively "Respondents"). This Order provides that Respondents shall undertake a Remedial Design ("RD"), including various procedures and technical analyses, to produce a detailed set of plans and specifications for implementation of the Remedial Action selected in EPA's October 5, 2010 Record of Decision ("ROD") and Amendment to the September 30, 1994 ROD (hereinafter collectively referred to as the "2010 ROD/ROD Amendment") for the Cortese Landfill Site ("Site"), located in Tusten, Sullivan County, New York. In addition, Respondents shall reimburse the United States for certain response costs that it incurs, as provided herein.

2. This Order is issued under the authority vested in the President of the United States by Sections 106 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §§ 9606 and 9622. This authority was delegated to the EPA Administrator by Executive Order 12580 (52 Fed. Reg. 2923, Jan. 29, 1987) and further delegated to EPA Regional Administrators by EPA Delegation No. 14-14-C. The Regional Administrator of EPA Region 2 further delegated this authority to the Director of the Emergency and Remedial Response Division by EPA Region 2 Order R-1200 on November 23, 2004.

3. EPA and Respondents recognize that this Order has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Order do not constitute an admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings of fact, conclusions of law, and determinations in Sections IV and V of this Order. Respondents agree to comply with, and be bound by, the terms of this Order and further agree that they will not contest the basis or validity of this Order or its terms.

4. EPA and Respondents are entering into this Order to protect public health and welfare and the environment at the Site by Respondents' design of response actions, to reimburse EPA's response costs, and to resolve EPA's claims against Respondents as provided in this Order.

5. In accordance with the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, *et seq.*, as amended ("NCP"), and Section 106 of CERCLA, 42 U.S.C. § 9606, EPA notified the State of New York (the "State") of the issuance of this Order.

II. PARTIES BOUND

6. This Order applies to and is binding upon EPA and Respondents and their successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's

responsibilities under this Order. The signatories to this Order certify that they are authorized to execute and legally bind the parties they represent.

7. Respondents are jointly and severally liable for carrying out all activities required by this Order. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Order, the remaining Respondents shall complete all such requirements.

8. Respondents shall ensure that their contractors, subcontractors, and representatives receive a copy of this Order within fourteen (14) days after the Effective Date of this Order or after the date of such retention. Respondents shall be responsible for any noncompliance with this Order by their contractors, subcontractors, and representatives.

III. DEFINITIONS

9. Unless otherwise expressly provided herein, terms used in this Order that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Order, in the documents attached to this Order, or incorporated by reference into this Order, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.
- b. "Consent Decree" shall mean the 1996 consent decree entered into between EPA and Respondents to implement the 1994 ROD.
- c. "Day" shall mean a calendar day. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, or federal holiday, this period shall run until the close of business of the next working day.
- d. "Effective Date" shall be the effective date of this Order as provided in Section XXVIII (Effective Date and Subsequent Modification).
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Order, verifying the Work, or otherwise implementing, overseeing, or enforcing this Order, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 50 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation) and Paragraph 86 (Work Takeover)."

- g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with CERCLA § 107(a), 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, *et seq.*, including any amendments thereto.
- i. "NYSDEC" shall mean the New York State Department of Environmental Conservation and any of its successor departments or agencies.
- j. "Order" shall mean this Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Order and any appendix, this Order shall control.
- k. "Paragraph" shall mean a portion of this Order identified by an Arabic numeral.
- l. "Parties" shall mean EPA and Respondents.
- m. "Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in Section II of the 2011 RD SOW.
- n. "2010 ROD/ROD Amendment" shall mean the 2010 EPA Record of Decision and Amendment to the 1994 ROD and all attachments thereto that the Director of the Emergency and Remedial Response Division, EPA Region 2 signed on October 5, 2010.
- o. "Remedial Design" or "RD" shall mean those activities that Respondents shall undertake to develop the plans and specifications for the Remedial Action.
- p. "Remedial Design Work Plan" or "RD Work Plan" shall mean the document, and any amendments thereto, developed pursuant to Paragraph 33 of this Order and the 2011 RD SOW and approved by EPA.
- q. "Section" shall mean a portion of this Order identified by a Roman numeral and includes one or more paragraphs.
- r. "Site" shall mean the Cortese Landfill Superfund Site located in Tusten, Sullivan County, New York, as described in the 2010 ROD/ROD Amendment.
- s. "State" shall mean the State of New York.

- t. "2011 Remedial Design Statement of Work" or "2011 RD SOW" shall mean the statement of work for implementation of the RD, and any modifications made thereto in accordance with this Order, as set forth in Appendix A of this Order. The 2011 RD SOW is incorporated into this Order and is an enforceable part of this Order.
- u. "Waste Material" shall mean: 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of the Solid Waste Disposal Act, as amended, 42 U.S.C. § 6903(27).
- v. "Work" shall mean all activities Respondents are required to perform to complete the design of the response action selected in the 2010 ROD/ROD Amendment as set forth in the 2011 RD SOW, except those required by Section XIII (Record Retention).

IV. FINDINGS OF FACT

10. The Site includes approximately 5.28 acres of a former landfill, of which 3.75 acres is owned by the John Cortese Construction Corp. ("Cortese") and 1.53 acres, located along the northern portion of the Cortese property, is owned by the Town of Tusten, which purchased the property from Cortese in 1973. The Site is bounded to the northeast by a steep bedrock escarpment and to the southwest by a Norfolk Southern railroad embankment. The northern edge of the Site lies approximately 70 feet south of the Tusten Waste Water Treatment Plant. Approximately 550 people live within one mile of the Site, and six homes are located about 400 feet away from the former landfill. The Delaware River, classified by the National Park Service as a Wild and Scenic River, is located 450 feet west of the Site and is used for fishing and recreational activities.

11. Prior to 1970, the Site was undeveloped. From 1970 to 1981, a 3.5-acre portion of the Site, which was initially called the Tusten Landfill ("Landfill"), received municipal waste. Disposal practices at the Landfill were poorly documented, and records regarding the types and volume of waste received are essentially nonexistent. However, records do indicate that, for a six-month period in 1973, the Landfill apparently received 5,000 to 8,000 drums of industrial wastes, most of which were transported by Gaess Environmental Services, Inc. (purchased shortly thereafter by SCA Services, Inc.), and contained paint thinners and sludge, solvents, dyes, and petroleum waste products. Some of these drums were buried and others were emptied in trenches or into one of two lagoons located on-Site south of the Landfill operations. The other lagoon was allegedly used exclusively for the disposal of residential septage sludge.

12. In 1979, a Draft Environmental Impact Statement for the Landfill was submitted to the New York State Department of Environmental Conservation ("NYSDEC") in order to fulfill part of the data requirements necessary to complete a permit application that would allow Cortese to continue operating the Landfill. The report recommended the implementation of groundwater monitoring to determine whether the area was contaminated by previous disposal practices at the Site. The groundwater monitoring data revealed elevated concentrations of hazardous substances and, as a result, the Cortese Landfill Site was placed on the National Priorities List ("NPL") pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on June 1, 1986.

In April 1990, EPA became the lead agency for this Site and subsequently oversaw the completion of a test pit program, an ecological assessment, the remedial investigation ("RI"), and a feasibility study ("FS").

13. The remedy selected in the September 30, 1994 ROD ("1994 ROD") called for the removal and off-Site treatment and/or disposal of drums and contaminated soil associated with the drums; installation of a low permeability cover system over the Landfill; regrading and storm-water management improvements at the Landfill; extraction and treatment of contaminated groundwater at the Site; discharge of treated groundwater either to the existing Town of Tusten wastewater treatment plant outfall, Delaware River, or reinjection to groundwater; long-term groundwater and surface-water monitoring; institutional controls to protect the integrity of the Landfill cover system and to reduce the potential future use of groundwater within the plume area; and implementation of long-term maintenance of the Landfill cap and operation and maintenance of the groundwater extraction and treatment system. A Consent Decree was signed by EPA and 28 parties to implement the remedy selected in the 1994 ROD which was entered in U.S. District Court in May 1996.

14. Pursuant to the remedy selected in the 1994 ROD, Respondents excavated and disposed of more than 5,000 drums filled with hazardous liquids, solids, and sludges, three tractor-trailer loads of hazardous liquid, and 50 dump trucks of contaminated soil at an off-Site location in 1996. The design of the cap component of the remedy was completed in May 1997. The installation of the cap was completed in October 1997 and certified by EPA in October 1998.

15. The release of additional contaminants to the groundwater has been effectively reduced by septage lagoon removal, drum removal, and Landfill capping. However, sampling data from 2004 indicated the presence of a previously undocumented source area beneath the former disposal trench in the center of the Landfill. Concentrations of contaminants in the groundwater near this source area are consistently well above federal and state standards, and these contaminants continue to migrate toward the Delaware River. Additional source characterization was conducted in 2007 to better evaluate the horizontal and vertical extent of this source area and to provide data to support the selection and design of potential in-situ source area treatment technologies. A second source area outside the Landfill footprint is inferred to exist beneath the former septage lagoons and/or an adjacent drum disposal trench, both of which were excavated in the mid-1990s.

16. The PRPs experienced logistical problems with the design of the groundwater extraction and treatment components of the 1994 ROD remedy. Because of space constraints related to equipment and infrastructure sharing the same space as the landfill cap and wetlands, as well as difficulties related to transmitting the treated effluent either beneath the large railroad embankment to the Delaware River or to the groundwater, the PRPs began investigating different remedial approaches to those contemplated in the 1994 ROD.

17. Because of the discovery of a new source area and the logistical problems with the groundwater extraction and treatment system, on October 5, 2010, the 2010 ROD/ROD Amendment was executed selecting:

- a. Air sparging of the source areas for approximately seven years to remove a significant quantity of the petroleum hydrocarbons and other volatile organic compounds;
- b. Collection and discharge to the atmosphere after aboveground treatment, if necessary, of the extracted vapors from the air sparge wells using soil vapor extraction (SVE);
- c. Amendment additions to the air sparging/SVE, such as ozone, for the final phase of the air sparge/SVE period;
- d. Subsurface-stabilization period for up to five years after the air-sparging program has been completed;
- e. Subsequent application of in-situ chemical oxidation, if necessary, potentially including a surfactant enhancement, to address the remaining more recalcitrant source materials;
- f. Monitored natural attenuation (MNA) of the groundwater downgradient from the landfill perimeter; and
- g. Long-term monitoring.

18. This Order addresses the design of only those response actions selected in the 2010 ROD/ROD Amendment and supersedes and relieves the requirements and obligations of the Consent Decree only to the extent that the 1994 ROD has been amended, namely, as regards groundwater extraction and treatment. All other requirements and obligations under the Consent Decree remain in effect and survive this Order.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, as well as the Administrative Record supporting this Order, EPA has determined that:

19. The Cortese Landfill Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substance(s)" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

21. Each Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

22. Each Respondent is a responsible party as defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is subject to this Order under Section 106(a) of CERCLA, 42 U.S.C. §

9606(a). Respondents are jointly and severally liable for performance of response actions under the Order and for response costs incurred, and to be incurred, at the Site.

- a. Respondent Town of Tusten was and is an "owner(s)" and/or "operator(s)" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
- b. Respondent Town of Tusten was an "owner(s)" and/or "operator(s)" of the facility at the time of disposal of hazardous substances at the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).
- c. Respondents Consolidated Edison Company of New York, Inc., Evonik Degussa Corporation as successor to Huls America Inc., successor to Kay Fries Chemicals, Inc., United Technologies Corporation on behalf of BASF Corporation, as successor to Immont Corporation, Henkel Corporation, successor by merger to Indopco, Inc. d/b/a National Starch & Chemical Company, and SCA Services, Inc., arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the facility, within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).
- d. Respondent SCA Services, Inc., as successor to Gaess Environmental Services, Inc., accepted hazardous substances for transport to the facility, within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

23. The conditions described in Section IV (Findings of Fact) above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

VI. ORDER

24. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondents shall comply with all provisions of this Order, including, but not limited to, all attachments to this Order and all documents incorporated by reference into this Order.

VII. DESIGNATED PROJECT MANAGER AND COORDINATORS

25. Respondents have designated Mark Snyder of SCA Services, Inc. as their Project Coordinator. The Project Coordinator shall be responsible for administration and oversight of all Respondents' actions required by this Order. The Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Order. Respondents shall have the right to change their Project Coordinators subject to EPA approval. Respondents shall notify EPA ten (10) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice. If EPA disapproves of a proposed designated Project Coordinator, Respondents shall propose a different Project

Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within seven (7) days following EPA's disapproval.

26. EPA correspondence related to this Order will be sent to the Project Coordinator. Notice by EPA in writing to the Project Coordinator shall be deemed notice to Respondents for all matters relating to the Work under this Order and shall be effective upon receipt. To the extent possible, the Project Coordinator shall be present on-Site or readily available for EPA to contact during all working days and be retained by Respondents at all times until EPA issues a Notice of Completion of the Work in accordance with Paragraph 115.

27. Respondents have selected Geosyntec Consultants, Inc. as the contractor to perform the Work. Respondents shall notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform Work under this Order at least ten (10) days prior to commencement of such Work. Respondents shall have the right to change their contractors subject to EPA approval. Respondents shall notify EPA ten (10) days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice. If EPA disapproves of a proposed contractor, Respondents shall propose a different contractor and shall notify EPA of that contractor's name, address, telephone number, and qualifications within seven (7) days following EPA's disapproval.

28. Respondents shall provide a copy of this Order and the attached 2011 RD SOW to each contractor and subcontractor approved and retained to perform the Work required by this Order. Respondents shall include in all contracts or subcontracts entered into for Work required under this Order provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities in compliance with this Order and all applicable laws and regulations. Respondents shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Order.

29. EPA has designated Mark Granger of the Emergency and Remedial Response Division, Region 2, as its Remedial Project Manager ("RPM"). Except as otherwise provided in this Order, Respondents shall direct all submissions required by this Order to the RPM via email at granger.mark@epa.gov or by regular mail to 290 Broadway, 20th Floor, New York, NY 10007-1866. EPA shall have the right to change its RPM at any time.

30. EPA's RPM shall have the authority lawfully vested in an RPM by the NCP. In addition, EPA's RPM shall have the authority, consistent with the NCP, to halt any Work required by this Order and to take any necessary response action when the RPM determines that conditions at the Site may present an immediate endangerment to public health, welfare, or the environment. The absence of the RPM from the area under study pursuant to this Order shall not be cause for the stoppage or delay of Work.

VIII. WORK TO BE PERFORMED

31. Respondents shall perform all actions necessary to implement the 2011 RD SOW and this Order. Respondents shall conduct the Work required hereunder in accordance with CERCLA, the NCP, and the 2010 ROD/ROD Amendment, as well as applicable provisions of relevant guidance documents, including but not limited to *Guidance for Scoping the Remedial Design* (EPA 540/R-95/025, March 1995). The RPM shall use his or her best efforts to inform Respondents if new or revised guidance may apply to the Work.

32. Respondents shall assure that field personnel used by Respondents are properly trained and certified.

33. Remedial Design Work Plan and Remedial Design. Respondents have submitted, and EPA has approved, a work plan dated May 2011 for the design of the Remedial Action at the Site ("RD Work Plan"). The RD Work Plan provides for the design of the remedy set forth in the 2010 ROD/ROD Amendment, in accordance with the 2011 RD SOW and for the achievement of the Performance Standards and other requirements set forth in the 2010 ROD/ROD Amendment, this Order, and/or the 2011 RD SOW.

- a. The RD Work Plan is incorporated into and enforceable under this Order.
- b. Respondents shall implement the RD Work Plan.
- c. The schedule included in the RD Work Plan provides that Respondents will submit a Pre-Final RD Report to EPA in August 2011. Respondents shall also prepare and submit to EPA for review and comment a specification for a Health and Safety/Contingency Plan and a Monitored Natural Attenuation Plan in accordance with the 2011 RD SOW and the schedule set forth in the RD Work Plan.
- d. Respondents shall submit a Final RD Report. The approved RD Report shall be implemented using the principles of EPA Region 2's "Clean and Green Policy", dated March 11, 2010, which may be found at http://www.epa.gov/region2/superfund/green_remediation/policy.html. Respondents' compliance with the Clean and Green Policy shall be ultimately reflected in the EPA-approved RD Report.

34. Upon EPA's approval, this Order incorporates any reports, plans, specifications, schedules, and attachments required by this Order or the 2011 RD SOW. With the exception of extensions that EPA allows in writing or certain provisions within Section XVII of this Order (*Force Majeure*), any non-compliance with such EPA-approved reports, plans, specifications, schedules, and attachments shall be considered a violation of this Order and may subject Respondents to stipulated penalties in accordance with Section XVIII of this Order (Stipulated Penalties).

35. If any unanticipated or changed circumstances exist at the Site that may significantly affect the Work or schedule, Respondents shall notify the EPA RPM by telephone within 24

hours of discovery of such circumstances. Such notification is in addition to any notification required by Section XVII (*Force Majeure*).

36. Additional Tasks

- a. If EPA determines that additional tasks, including, but not limited to, additional investigatory work or engineering evaluation, are necessary to complete the Work, EPA shall notify Respondents in writing. Respondents shall submit a work plan or an amendment to the RD Work Plan, as appropriate, to EPA for the completion of any such additional tasks within 60 days of receipt of such notice, or such longer time as EPA agrees. The work plan shall be completed in accordance with the same standards, specifications, and requirements of other deliverables pursuant to this Order. EPA will review and comment on, as well as approve, approve with conditions, modify, or disapprove the work plan or an amendment to the RD Work Plan pursuant to Section IX (EPA Approval of Plans and Other Submissions). Upon approval or approval with modifications of the work plan, Respondents shall implement the additional work in accordance with the schedule of the approved work plan. Failure to comply with this Subsection, including, but not limited to, failure to submit a satisfactory work plan, may subject Respondents to stipulated penalties as set forth in Section XVIII (Stipulated Penalties).
- b. If, at any time during the RD process, Respondents become aware of the need for additional data beyond the scope of the approved Work Plans, Respondents shall submit to EPA's Project Coordinator, within twenty (20) days, a memorandum documenting the need for additional data.

37. Community Relations Plan. EPA will utilize the existing community relations plan, prepared in accordance with EPA guidance and the NCP. As requested by EPA, Respondents shall provide information supporting EPA's community relations plan and shall participate, if requested by EPA, in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by EPA to explain activities at, or concerning, the Site.

38. Emergency Response and Notification of Releases.

- a. In the event of any action or occurrence during performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release and shall immediately notify the EPA RPM. Respondents shall take such actions in consultation with EPA's RPM or other available authorized EPA officer and in accordance with all applicable provisions of this Order, including the Health and Safety Plan and any other applicable plans or documents developed pursuant to the 2011 RD SOW. In the event that Respondents fail to take appropriate response action as required by this

Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA all costs of the response action not inconsistent with the NCP, pursuant to Section XV (Payment of Future Response Costs).

- b. In addition, in the event of any release of a hazardous substance from the Site, Respondents shall immediately notify the National Response Center at (800) 424-8802. Respondents shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken, or to be taken, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting required under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

IX. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

39. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Order EPA shall, in a notice to Respondents: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondents at least one notice of deficiency and an opportunity to cure within thirty (30) days or such longer time as specified by EPA, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved because of material defects.

40. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Subparagraphs 39(a), (b), (c), or (e), Respondents shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XVI (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA approval or modification of a submission or portion thereof, Respondents shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Subparagraph 39 (c) and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVIII (Stipulated Penalties).

41. Resubmission of Plans.

- a. Respondents shall not proceed further with any subsequent activities or tasks until receiving EPA approval, approval on condition, or modification of the plan, report, or other deliverable. While awaiting EPA approval, approval on condition, or modification of the plan, report, or other deliverable, Respondents shall proceed with all other tasks and activities that may be conducted independently of the Work under the plan, report, or other deliverable, in accordance with the schedule set forth under this Order and 2011 RD SOW.

- b. Upon receipt of a notice of disapproval, Respondents shall, within thirty (30) days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval.
 - c. Notwithstanding the receipt of a notice of disapproval, Respondents shall proceed to take any action required by any non-deficient, approved portion of the submission, unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondents of any liability for stipulated penalties under Section XVIII (Stipulated Penalties).
42. If EPA disapproves a resubmitted plan, report, or other deliverable, or portion thereof, EPA may again direct Respondents to correct the deficiencies. EPA also retains the right to modify or develop the plan, report, or other deliverable. Respondents shall implement any such plan, report, or deliverable as corrected, modified, or developed by EPA, subject only to Respondents' right to invoke the procedures set forth in Section XVI (Dispute Resolution).
43. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA because of a material defect, Respondents shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately, unless Respondents invoke the dispute resolution procedures in accordance with Section XVI (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a Dispute Resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XVI (Dispute Resolution) and Section XVIII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified, or superseded as a result of a decision or agreement reached pursuant to the Dispute Resolution process set forth in Section XVI, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVIII.
44. All plans, reports, and other deliverables submitted to EPA under this Order shall, upon approval by EPA, be incorporated into and enforceable under this Order. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Order, the modified portion shall be incorporated into and become enforceable under this Order. In the event that EPA takes over some of the tasks, Respondents shall incorporate and integrate information supplied by EPA into the final reports.

X. REPORTING

45. Respondents shall submit written monthly progress reports to EPA concerning actions undertaken pursuant to this Order no later than the twenty-eighth (28th) day of the month following the end of each reporting period after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed in writing by the RPM. These reports shall describe all significant developments during the preceding month, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a

schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

46. Respondents shall submit to EPA and NYSDEC copies of all plans, reports, or other submissions required by this Order, the 2011 RD SOW, or any approved work plan. Upon request by or agreement of EPA, Respondents shall submit such plans, reports, or other submissions in electronic form. Any electronic submissions must be in a format that is compatible with EPA software and in database files and sizes to be specified by EPA. In addition, Respondents will provide electronic submittal of sampling and geologic data collected after the effective date of this AOC in accordance with EPA Region 2 policies, guidelines, and formats. Geologic data includes all newly-installed monitoring wells and representative data from borings within the source areas. The EPA Region 2 Electronic Data Deliverable ("R2 EDD") is a standardized format for all electronic submittals. Electronic submittals of sampling and geologic data will be made in accordance with the project schedule and in conjunction with the submittal of reports. Respondents are responsible for reviewing any contractor work and ensuring consistency with R2 EDD requirements. The R2 EDD *Comprehensive EDD Specification Manual* includes instruction manuals and data-submission and validation files. The most recent R2 EDD policies, guidelines, and formats, including the most recent *Comprehensive EDD Specification Manual*, can be found at: <http://www.epa.gov/region02/superfund/medd.htm>

Reports should be submitted to the following:

1 copy Remedial Project Manager – Cortese Landfill Site
(2 electronic): Emergency and Remedial Response Division
United States Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, New York 10007-1866
Granger.Mark@epa.gov

1 copy: Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
Attn: Cortese Landfill Superfund Site Attorney

1 copy: John Greco
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12207

47. Final Report. Within thirty (30) days after completion of all Work required by this Order, Respondents shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. The final report shall include the following certification signed by a person who supervised or directed the preparation of that report:

To the best of my knowledge, after thorough investigation, I certify that the information contained in, or accompanying, this submission is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

XI. SITE ACCESS

48. If any Respondent owns or controls the Site or any other property where access is needed to implement this Order, such Respondent shall, commencing on the Effective Date, provide EPA and its/their representatives, including contractors, with access at all reasonable times to the Site, or such other property, to conduct any activity related to this Order. Respondents who own or control property at the Site shall, at least thirty (30) days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Order and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their successors comply with this Section and Section XII (Access to Information).

49. Where any action under this Order is to be performed in areas owned by, or in possession of, someone other than Respondents, Respondents shall use their best efforts to obtain all necessary access agreements within thirty (30) days after the Effective Date, or as otherwise specified in writing by EPA. Respondents shall immediately notify EPA if, after using their best efforts, they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondents shall describe in writing their efforts to obtain access.

50. If Respondents cannot obtain access agreements, EPA may then assist Respondents in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondents shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs). EPA may also, in the alternative, perform those tasks or activities which necessitate access with EPA contractors, or terminate the Order. If EPA performs those tasks or activities with EPA contractors and does not terminate the Order, Respondents shall perform all other activities not requiring access to the Site and shall reimburse EPA for all costs incurred in performing such activities. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

51. Notwithstanding any provision of this Order, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. ACCESS TO INFORMATION

52. Respondents shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, and correspondence. Respondents shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

53. Respondents may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Order to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA, or if EPA has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondents. Respondents shall segregate and clearly identify all documents or information submitted under this Order for which Respondents assert business confidentiality claims.

54. Respondents may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: a) the title of the document, record, or information; b) the date of the document, record, or information; c) the name and title of the author of the document, record, or information; d) the name and title of each addressee and recipient; e) a description of the contents of the document, record, or information; and f) the privilege asserted by Respondents. However, no documents, reports, or other information created or generated pursuant to the requirements of this Order shall be withheld on the grounds that they are privileged.

55. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at, or around, the Site.

XIII. RECORD RETENTION

56. During the pendency of this Order and until ten (10) years after Respondents' receipt of EPA's notification that the Work has been completed, each Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Respondents shall also instruct

their contractors and agents to preserve all documents, records, and other information of whatever kind, nature, or description relating to performance of the Work until 10 years after notification that the Work has been completed.

57. At the conclusion of this document retention period, Respondents shall notify EPA at least ninety (90) days prior to the destruction of any such documents, records, or other information and, upon request by EPA, Respondents shall deliver any such documents, records, or other information to EPA. Respondents may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege, they shall provide EPA with the information set forth in Paragraph 53, above.

58. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site, and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. COMPLIANCE WITH OTHER LAWS

59. Respondents shall undertake all action that this Order requires in accordance with the requirements of all applicable local, state, and federal laws and regulations, unless an exemption from such requirements is specifically provided by law or in this Order. The activities conducted pursuant to this Order, if approved by EPA, shall be considered consistent with the NCP.

60. Except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site. If a permit would otherwise be required for on-Site activities, all Work shall be performed to satisfy the substantive requirements of such a permit. Where any portion of the Work requires a federal or state permit or approval, Respondents shall submit timely applications and take all other actions necessary to obtain and to comply with all such permits or approvals.

61. This Order is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. PAYMENT OF FUTURE RESPONSE COSTS

62. Respondents shall pay EPA all Future Response Costs not inconsistent with the NCP. On an annual basis, EPA will send Respondents a bill requiring payment that includes a printout of cost data in EPA's financial management system. Respondents shall make all payments to EPA via electronic funds transfer ("EFT") within thirty (30) days of receipt of each bill requiring payment.

63. To effect payment via EFT, Respondents shall instruct their bank to remit payment in the required amount via EFT using the following information, or such other updated EFT information that EPA may subsequently provide to Respondents:

- Amount of payment
- Bank: **Federal Reserve Bank of New York**
- Account code for Federal Reserve Bank account receiving the payment: **68010727**
- Federal Reserve Bank ABA Routing Number: **021030004**
- SWIFT Address: **FRNYUS33**
33 Liberty Street
New York, NY 10045
- Field Tag 4200 of the Fedwire message should read: **D 68010727 Environmental Protection Agency**
- Name of remitter: Cortese Landfill Potentially Responsible Parties Group
- Index number: **CERCLA - 02-2010-2030**
- Site/spill identifier: **02-X9**

At the time of payment, Respondents shall send notice that such payment has been made by email to acctsreceivable.cinwd@epa.gov and to:

U.S. Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

and:

Mark Granger, Remedial Project Manager
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866

as well as to:

Lauren P. Charney
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866

Such notice shall reference the date of the EFT, the payment amount, the name of the Site, the Order index number, and Respondents' names and addresses.

64. In the event that the payments for Future Response Costs are not made within thirty

(30) days of Respondents' receipt of a bill, Respondents shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondents' failure to make timely payments under this Section, including, but not limited to, payment of stipulated penalties pursuant to Section XVIII.

65. Respondents may contest payment of any Future Response Costs billed under Paragraph 62, if they determine that EPA has made an accounting error or if they believe EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the EPA RPM. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondents shall within the thirty (30)-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 63. Simultaneously, Respondents shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondents shall send to the EPA RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondents shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within thirty (30) days of the resolution of the dispute, Respondents shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 63. If Respondents prevail concerning any aspect of the contested costs, Respondents shall pay to EPA any remaining portion of the costs (plus associated accrued interest) for which they did not prevail to EPA in the manner described in Paragraph 63.

XVI. DISPUTE RESOLUTION

66. Unless this Order expressly provides otherwise, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Order. The Parties shall attempt to resolve any disagreements concerning this Order expeditiously and informally.

67. If Respondents object to any EPA action taken pursuant to this Order, including billings for Future Response Costs, they shall notify EPA in writing of their objection(s) within thirty (30) days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondents shall have twenty (20) days from EPA's receipt of Respondents' written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

68. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part

of this Order. If the Parties are unable to reach an agreement within the Negotiation Period, Respondents may submit to EPA a written statement of position and EPA may provide a reply. The Division Director of the Emergency and Remedial Response Division will issue a written decision on the dispute to Respondents. EPA's decision shall be incorporated into and become an enforceable part of this Order. Respondents' obligations under this Order shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondents shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs. Respondents shall proceed in accordance with EPA's final decision regarding the matter in dispute, regardless of whether Respondents agree with the decision.

XVII. FORCE MAJEURE

69. Respondents agree to perform all requirements of this Order within the time limits established under this Order, unless the performance is delayed by a *force majeure*. For purposes of this Order, a *force majeure* is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including, but not limited to, their contractors and subcontractors, that delays or prevents performance of any obligation under this Order despite Respondents' best efforts to fulfill the obligation. The requirement that Respondents exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential *force majeure* event (a) as it is occurring and (b) following the potential *force majeure* event, such that the delay is minimized to the greatest extent possible. *Force majeure* does not include financial inability to complete the Work or increased cost of performance.

70. If any event occurs or has occurred that may delay the performance of any obligation under this Order, whether or not caused by a *force majeure* event, Respondents shall notify EPA orally within two (2) days of when Respondents first knew that the event might cause a delay. Within five (5) days thereafter, Respondents shall provide to EPA in writing the following: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondents' rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondents, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Failure to comply with the above requirements shall preclude Respondents from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure. Respondents shall be deemed to know of any circumstance of which Respondents, any entity controlled by Respondents, or Respondents' contractors knew or should have known.

71. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Order that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If

EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondents in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondents in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

72. Respondents shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 73 and 74 for failure to comply with the requirements of this Order specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondents shall include completion of the activities required under this Order or any work plan or other plan approved under this Order identified below in accordance with all applicable requirements of law, this Order, the 2011 RD SOW, and any plans or other documents approved by EPA pursuant to this Order and within the specified time schedules established by, and approved under, this Order.

73. For all requirements of this Order, other than the timely provision of progress reports required by Paragraph 45, stipulated penalties shall accrue in the amount of \$1,000 per day, per violation, for the first seven (7) days of noncompliance, \$2,000 per day, per violation, for the 8th through 15th day of noncompliance, \$3,000 per day, per violation, for the 16th through 25th day of noncompliance, and \$7,000 per day, per violation, for the 26th day of noncompliance and beyond.

74. For the progress reports required by Paragraph 45, stipulated penalties shall accrue in the amount of \$250 per day, per violation, for the first seven (7) days of noncompliance, \$500 per day, per violation, for the 8th through 15th day of noncompliance, \$1,000 per day, per violation, for the 16th through 25th day of noncompliance, and \$2,000 per day, per violation, for the 26th day of noncompliance and beyond.

75. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 86, Respondents shall be liable for a stipulated penalty in the amount of \$300,000.

76. All penalties shall begin to accrue on the day after the complete performance is due, or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: a) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondents of any deficiency; and b) with respect to a decision by the EPA Director of the Emergency and Remedial Response Division as set forth in Paragraph 68 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 30th day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Order.

77. Following EPA's determination that Respondents have failed to comply with a requirement of this Order, EPA may give Respondents written notification of the failure and describe the noncompliance. EPA may send Respondents a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondents of a violation.

78. Respondents shall pay EPA all penalties accruing under this Section within thirty (30) days of Respondents' receipt from EPA of a demand for payment of the penalties, unless Respondents invoke the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be made via EFT in accordance with the payment procedures in Paragraph 63 above.

79. The payment of penalties shall not alter in any way Respondents' obligation to complete performance of the Work required under this Order.

80. Penalties shall continue to accrue during any dispute resolution period but need not be paid until fifteen (15) days after the dispute is resolved by agreement or by receipt of EPA's decision per Paragraph 68.

81. If Respondents fail to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondents shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 78.

82. Nothing in this Order shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondents' violation of this Order or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Order, or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 86. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Order.

XIX. COVENANT NOT TO SUE BY EPA

83. In consideration of the actions that Respondents will perform and the payments that Respondents will make under the terms of this Order, and except as otherwise specifically provided in this Order, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work performed under this Order and for recovery of Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon

Respondents' complete and satisfactory performance of all obligations under this Order, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondents and does not extend to any other person.

XX. RESERVATION OF RIGHTS BY EPA

84. Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Order, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

85. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Order is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondents to meet a requirement of this Order;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response actions other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred, or to be incurred, by the Agency for Toxic Substances and Disease Registry related to the Site.

86. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may assume the performance of any or all portion(s) of the Work as EPA determines necessary. Respondents may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs that the United States incurs in performing the Work pursuant to this Paragraph shall be considered Future Response Costs

that Respondents shall pay pursuant to Section XV (Payment of Future Response Costs). Notwithstanding any other provision of this Order, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENTS

87. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, past response actions, Future Response Costs, or this Order, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at, or in connection with, the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Future Response Costs.

88. Except as expressly provided in Section XXI, Paragraphs 91, 93, and 94 (Non-Exempt *De Micromis*, *De Minimis*, and MSW Waivers), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Subparagraphs 85(b), (c), and (e) - (g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

89. Respondents reserve, and this Order is without prejudice to, claims against the United States subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United States, if a private person would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of Respondents' plans or activities. The foregoing applies only to claims that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

90. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

91. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Work, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

92. The waiver in Paragraph 91 shall not apply with respect to any defense, claim or cause of action that a Respondent may have against any person meeting the above criteria, if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria, if EPA determines:

- a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e) or Section 3007 of RCRA, 42 U.S.C. §6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or
- b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

93. Respondents agree not to assert any claims and to waive all claims or causes of action (including, but not limited to, claims or causes of action under Sections 107(a) and 113 of CERCLA, 42 U.S.C. §§9607(a) and 9613) that they may have for all matters relating to the Work, against any person that enters into a final *de minimis* settlement under Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), or a final settlement based on limited ability to pay, with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against such Respondent.

94. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Work, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of Municipal Solid Waste ("MSW") at the Site, if the volume of MSW disposed, treated or transported by such person to the Site did not exceed 0.2 percent of the total volume of waste at the Site.

95. The waiver in Paragraph 94 above shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person meeting the above criteria if

such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria, if EPA determines that: (a) the MSW contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; (b) the person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e) or Section 3007 of RCRA, 42 U.S.C. § 6927, or (c) the person impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site.

XXII. OTHER CLAIMS

96. By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The United States or EPA shall not be deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

97. Except as expressly provided in Section XXI, Paragraphs 91, 93, and 94 (Non-Exempt *De Micromis*, *De Minimis*, and MSW Waivers) and Section XIX (Covenant Not to Sue by EPA), nothing in this Order shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Order. Except as provided in Paragraphs 91, 93, and 94, each Respondent expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Respondent may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto. Nothing in this Order diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

98. No action or decision by EPA pursuant to this Order shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION PROTECTION

99. The Parties agree that this Order constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the effective date, to protection from contribution actions or claims as provided by Sections 113(f)(2) of CERCLA, 42 U.S.C. §§ 9613(f)(2), for "matters addressed" under this Order. The "matters addressed" under this Order are the Work and Future Response Costs. The Parties also agree that this Order constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have resolved their liability to the United States for the Work performed under this Order and for Future Response Costs.

XXIV. INDEMNIFICATION

100. Respondents shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Order. In addition, Respondents agree to pay the United States all costs incurred by the United States, including, but not limited to, attorneys fees and other expenses of litigation and settlement, arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Order. The United States shall not be held out as a party to any contract entered into, by, or on behalf of Respondents in carrying out activities pursuant to this Order. Neither Respondents nor any such contractor shall be considered an agent of the United States.

101. The United States shall give Respondents notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondents prior to settling such claim.

102. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made, or to be made, to the United States, arising from, or on account of, any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on, or relating to, the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from, or on account of, any contract, agreement, or arrangement between any one or more of Respondents and any person for performance of Work on, or relating to, the Site.

XXV. INSURANCE

103. At least five (5) days prior to commencing any on-Site Work under this Order, Respondents shall secure and shall maintain for the duration of this Order comprehensive general liability insurance with a limit of five (\$5) million dollars and automobile insurance with a limit of one (\$1) million dollars, combined single limit, naming the EPA as an additional insured. Within the same period, Respondents shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondents shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Order, Respondents shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondents in furtherance of this Order. If Respondents demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondents need provide only that portion of the insurance described above that is not maintained by such contractor or subcontractor.

XXVI. FINANCIAL ASSURANCE

104. Within thirty (30) days of the Effective Date, Respondents shall demonstrate their financial ability to complete the Work by submitting to EPA copies of one or more Respondents' most recent Annual Reports. Such Annual Reports shall demonstrate that Respondents have sufficient assets to perform the Work, which is valued by EPA at \$300,000. Each year thereafter, until the completion of the work, Respondents shall submit one or more Respondents' most recent Annual Reports to EPA within thirty (30) days of publication of such reports. In the event that EPA determines at any time that the financial assurances provided by the Annual Reports do not demonstrate Respondents' ability to complete the Work, then Respondents shall establish and maintain financial security in the amount needed to complete the Work, in one or more of the following forms:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA equaling the total estimated cost of the Work;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;
- e. a corporate guarantee to perform the Work provided by one or more parent corporations or subsidiaries of Respondents, or by one or more unrelated corporations that have a substantial business relationship with at least one of Respondents, including a demonstration that any such company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or
- f. a corporate guarantee to perform the Work by one or more of Respondents, including a demonstration that any such Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

105. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondents shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 104, above. In addition, if at any time EPA notifies Respondents that the anticipated cost of completing the Work has increased, then, within thirty (30) days of such notification, Respondents shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondents' inability

to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Order.

106. If Respondents seek to ensure completion of the Work through a guarantee pursuant to Subparagraph 104(e) or (f) of this Order, Respondents shall: (i) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (ii) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date, to EPA. For the purposes of this Order, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates," the current cost estimate of \$300,000 for the Work at the Site shall be used in relevant financial test calculations.

107. If, after the Effective Date, Respondents can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 104 of this Section, Respondents may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondents shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondents may change the form of financial assurance required hereunder only in accordance with a final decision resolving such dispute pursuant to Section XVI (Dispute Resolution).

108. Respondents may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondents may change the form of financial assurance required hereunder only in accordance with a final decision resolving such dispute pursuant to Section XVI (Dispute Resolution).

XXVII. INTEGRATION/APPENDICES

109. This Order, its appendices, and any deliverables, technical memoranda, specifications, schedules, documents, plans, and reports (other than progress reports) that will be developed pursuant to this Order and become incorporated into, and enforceable under, this Order constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Order. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Order.

110. In the event of a conflict between any provision of this Order and the provisions of any document attached to this Order or submitted or approved pursuant to this Order, the provisions of this Order shall control.

111. The following documents are attached to and incorporated into this Order:

"Appendix A" is the 2011 RD SOW.

XXVIII. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

112. This Order shall be effective five (5) days after the Order is signed by the EPA Region 2, Director of the Emergency and Remedial Response Division.

113. This Order may be amended by mutual agreement of EPA and Respondents. Amendments shall be in writing and shall be effective when signed by EPA after signature of Respondents.

114. No informal advice, guidance, suggestion, or comment by the EPA RPM or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Order, or to comply with all requirements of this Order, unless it is formally modified.

XXIX. NOTICE OF COMPLETION OF WORK

115. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with the requirements of this Order, with the exception of any continuing obligations required by this Order, including payment of Future Response Costs or record retention, EPA will provide written notice to Respondents. If EPA determines that any such Work has not been completed in accordance with this Order, EPA will notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies. Failure by Respondents to correct deficiencies shall be a violation of this Order.

116. The Parties anticipate that an amendment of the Consent Decree will be negotiated in the future. Upon entry of any such amendment to the Consent Decree which memorializes the obligations for performing the RD of the 2010 ROD/ROD Amendment, this Order shall be terminated and the terms of the 1996 Consent Decree, as amended, shall be operative. This Order in no way affects or relieves the Respondents' obligations, as applicable, under the 1996 Consent Decree which do not pertain to the response activities selected in the 2010 ROD/ROD Amendment.

In the Matter of the Cortese Landfill Superfund Site, Administrative Order on Consent, Index
No. CERCLA-02-2011-2007

Agreed this ____ day of _____, 2 ____.

For Respondent _____

By: _____

Title: _____

In the Matter of the Cortese Landfill Superfund Site, Administrative Order on Consent, Index
No. CERCLA-02-2011-2007

Agreed this 14th day of July, 2011.

For Respondent SCA Services, Inc.

By: 
Stephen T. Joyce

Title: Group Director-CSMG

In the Matter of the Cortese Landfill Superfund Site, Administrative Order on Consent, Index
No. CERCLA-02-2011-2007

Agreed this 14 day of JULY, 2011.

For Respondent CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By: 

Title: GENERAL COUNSEL

In the Matter of the Cortese Landfill Superfund Site, Administrative Order on Consent, Index
No. CERCLA-02-2011-2007

Agreed this 15 day of July, 2011.

For Respondent Everik Degussa Corporation

By: 

Title: Chief Compliance Officer

In the Matter of the Cortese Landfill Superfund Site, Administrative Order on Consent, Index
No. CERCLA-02-2011-2007

Agreed this 15 day of July, 2011.

For Respondent **Henkel Corporation, successor by merger to Indopco Inc., dba National
Starch & Chemical Company**

By: 

Paul R. Berry

Title: Senior Vice President, Chief Legal Officer & Secretary

For Respondent **Henkel Corporation, successor by merger to Indopco Inc., dba National
Starch & Chemical Company**

By: 

Christopher J. Signorello

Title: Assistant General Counsel



In the Matter of the Cortese Landfill Superfund Site, Administrative Order on Consent, Index
No. CERCLA-02-2011-2007

Agreed this 15th day of July, 2011.

For Respondent: United Technologies Corporation on behalf of BASF Corporation, as successor
to Inmont Corporation

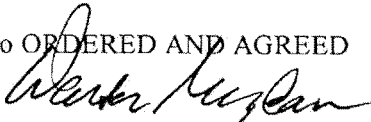
By: W.F. Leikin William F. Leikin

Title: Assistant General Counsel

In the Matter of the Cortese Landfill Superfund Site, Administrative Order on Consent, Index
No. CERCLA-02-2011-2007

It is so ORDERED AND AGREED

BY:



DATE:

July 19, 2011

Director, Emergency and Remedial Response, Region 2
United States Environmental Protection Agency